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DOC #:
DATE FILED: 8/12/08

06 Civ. 13552 (SHS) (MHD)

ORDER

ROBERT ERCOLE, Superintendent, Green
Haven Correctional Facility,

Respondent.

In a Report and Recommendation dated April 23, 2008, Magistrate Judge Michael H. Dolinger recommended that this petition for a writ of *habeas corpus* be denied. After a *de novo* review of Magistrate Judge Dolinger's Report and Recommendation dated April 23, 2008, petitioner's Objections to Report and Recommendation of Magistrate Judge Dolinger dated May 2, 2008, and respondent's Affidavit in Opposition to Petition for *Habeas Corpus* dated May 5, 2008,

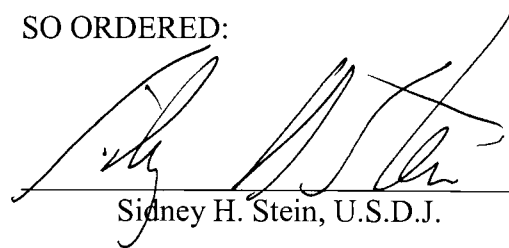
1. Magistrate Judge Dolinger's "Report and Recommendation" is adopted;
2. The petition pursuant to 28 U.S.C. § 2254 is dismissed;
3. As petitioner has made a substantial showing that reasonable jurists could find it debatable whether he was deprived of his constitutional rights pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), a certificate of appealability shall issue with respect to the alleged Brady

violation. Fed. R. App. P. 22(b)(1); 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000); and

3. As petitioner has not made a substantial showing of the denial of a constitutional right with respect to the sufficiency of the evidence in support of his conviction for depraved indifference murder pursuant to New York law, a certificate of appealability shall not issue with regard to that claim. 28 U.S.C. § 2253(c)(2); Middleton v. Attorneys Gen. of New York and Pennsylvania, 396 F.3d 207 (2d Cir. 2005) (per curiam).

Dated: New York, New York
August 12, 2008

SO ORDERED:



Sidney H. Stein, U.S.D.J.